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Excerpt of Transcript of
Conference with Judge
Figueredo on May 23, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
AMERIWAY CORPORATION, : Docket #17cv8834
 : 1:17-cv-08834-AT-VF
Plaintiff, :
- against - :
CHEN, et al., : New York, New York
 : May 23, 2022
Defendants. :
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE
THE HONORABLE VALERIE FIGUERO, D.O.,
UNITED STATES MAGISTRATE JUDGE

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APPEARANCES (CONTINUED):

For Defendants:

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2 you a little perspective, and I take the hit on this, Judge,
3 when they first, there was terms and conditions that Mr.
4 Shayne whose specialty is import/export, I do litigation,
5 but Mr. Shayne in the regular course of his business, when
6 he gets a client he looks at the, he knows that the terms
7 and conditions have been evolving over the years because of
8 different decisions in the Customs Court. And what he
9 does whenever he gets a new client, he does, he
10 presents them with the terms and conditions and they
11 usually accept because it asks (inaudible) had before
12 and updates things. And he did that after he was
13 retained by the defendant in this case, and they then
14 proceeded to put it on the website. That was not the
15 terms and conditions, that was done after this case
16 was started. Those are not the terms and conditions
17 that would apply in this case.

18 I, it's actually my staff, when plaintiff
19 asked for copies of the, of the power of attorney
20 which has terms and conditions, it refers to it in
21 there, we were, we just inadvertently under the
22 impression that it was the three-page version which is
23 what was added by Mr. Shayne, and it was put in
24 initially downloaded into our system, so whenever they
25 asked for terms and conditions we spit it out and we

2 gave them, you know, the power of attorney terms and
3 conditions. When plaintiff raises an issue and we
4 got into it, I realized our mistake and the
5 plaintiffs, I'm sorry, the defendant Chen was working
6 for another company before she got her license as a
7 customs broker. When she got her license and she

8 started her own company she took the terms and
9 conditions that they were using at her old job and
10 gave it to the printer and said, you know, put my name
11 in instead of the prior employer's names and those are
12 the terms and conditions that she was using and that's
13 a one page version. Both of them, they happened to be
14 different numbered paragraphs, I think it's 13 and 14,
15 respectively, but they both referred to a general, a
16 general lien. I don't want to insult the Court's
17 intelligence with this but a specific lien will allow
18 you to assert a lien against property that you have in
19 possession. In this case when there is nonpayment by
20 the --

21 THE COURT: Sorry, can I just interrupt you
22 just so that we don't go on at length. So my
23 understanding of the dispute is that the plaintiffs
24 want these native documents of the terms and
25 conditions or at least documents that predated April,

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2 from his client, the old document, so we can compare
3 the timelines here?

4 MR. SHAYNE: Your Honor, I have no problem
5 with taking a look, however, what I actually said was
6 when I get, when I take on a client, I don't, I review
7 their power of attorney, I do not review their terms
8 and conditions, I just give them their updated terms
9 and conditions, that's all I do. So the date of, of
10 receipt or review, there is no review of earlier terms
11 and conditions, it's just not done.

12 MR. WOLFGRAM: You said you updated and
13 revised them, how would you know what you're updating
14 then, sir?

15 MR. SHAYNE: Well if you want to testify for
16 me, that's okay.

17 MR. WOLFGRAM: You're going to --

18 MR. SHAYNE: I'm telling you that the way that
19 I do it is I review and revise the power of attorney,
20 okay, but the terms and conditions I do not review and
21 revise, the terms and conditions I simply provide them
22 with what I consider to be the updated version in the
23 industry, that's it, okay. So the fact of the matter
24 is I will be more than happy to look, Your Honor, in
25 terms of when I got that, but I will tell you I did

2 not review them.

3 THE COURT: Well, Mr. Shayne --

4 MR. WOLFGRAM: Your Honor, he said he was --
5 pardon. Sorry.

6 THE COURT: No, I was just going to say would
7 it be fine for, would it be okay for Mr. Shayne to
8 provide an affidavit to that effect or a declaration,
9 something under oath?

10 MR. SCHRIER: Absolutely.

11 THE COURT: Okay, so would that satisfy
12 plaintiffs?

13 MR. WOLFGRAM: Your Honor --

14 THE COURT: In addition to those searches that
15 we've discussed, obviously.

16 MR. WOLFGRAM: It would be a starting point,
17 Your Honor, I just think it is very, number one,
18 defendants cannot produce any electronic versions of the
19 prior terms and conditions and, number two, Mr. Shayne said
20 he never received the document from his client. He received
21 the power of attorney but he never received this new terms
22 and conditions of service sheet. And he just took it upon
23 himself to create evidence in a federal case and probably
24 made himself, he most certainly made himself a fact witness,
25 him and Mr. Shayne, because this is essential evidence --

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the case of Ameriway Corporation versus Chen, et al., Docket #19cv9407, was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Carole Ludwig

Carole Ludwig

Date: June 2, 2022